

# Court of Appeals, State of Michigan

## ORDER

People of MI v Antoine Wade

Docket No. 284113

LC No. 07-100078

Helene N. White  
Presiding Judge

Michael J. Talbot

Karen Fort Hood  
Judges

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In lieu of granting the delayed application, the Court orders, pursuant to MCR 7.205(D)(2), that the November 30, 2007, order of the Wayne Circuit Court affirming the district court's order of dismissal hereby is REVERSED. The district court erred in concluding that no evidence of identification was before it. Although the complainant failed to affirm defendant's identification as his assailant at the preliminary examination, the complainant testified that he had chosen a photograph of his assailant in the photographic show-up. The parties stipulated that defendant was the person depicted in that photograph. The complainant's failure to reaffirm his earlier identification does not bar the admissibility of that prior identification where he was subject to cross-examination about it. *People v Malone*, 445 Mich 369; 518 NW2d 418 (1994). Further, under MRE 801(d)(1)(C), a statement is not hearsay if a witness testifies and is subject to cross-examination concerning the statement, and the statement is one of identification of a person made after perceiving the person. The case is REMANDED for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 25 2008

Date

*Sandra Schultz Mengel*  
Chief Clerk